

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER NO. 286

**EXONERATING REGIONAL DIRECTOR JOSE C. PENDOZA OF THE
DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS**

This refers to the administrative case filed by former Undersecretary Jose F. Mabanta of the Department of Public Works and Highways (DPWH) against Mr. Jose C. Pendoza, Regional Director of the DPWH Region III Office, for dishonesty, falsification of official documents, grave misconduct, neglect of duty and conduct prejudicial to the best interest of the service in connection with the alleged irregularities in the construction of the P13 Million Ninoy Aquino By-Way Project.

The charges stemmed from the criminal complaint filed in March 1989 by the DPWH Fact-Finding Committee with the Office of the Ombudsman against Regional Director Pendoza and other DPWH officials stationed at Region III involved in the Ninoy Aquino By-Way Project for violation of the provisions of Republic Act No. 3019 (Anti-Graft and Corrupt Practices Act) and Article 208 of the Revised Penal Code. The said criminal complaint recited that respondent Pendoza, "despite his knowledge of the irregularities being committed in the execution of the project, allowed or tolerated infractions of the law, giving unwarranted benefits to the private contractors to the damage and prejudice of the government."

The same criminal complaint specifically alleged that Regional Director Pendoza allowed the use of substandard materials in the implementation of the Ninoy Aquino By-Way Project and tolerated non-compliance with the specifications prescribed by the Standard Specification for Highways and Bridges, otherwise known as the Red Book.

To support the charges against Regional Director Pendoza, the DPWH Fact-Finding Committee submitted the respective affidavits of Engr. Stephen David, General Construction Foreman Mely Ramoneda and Project Engineer Dante Sarmiento; the Report dated 3 February 1989 submitted by Engrs. Felino Tria, Nestor de Leon, Vicente Miranda and Carlos Baluyot on their investigation of the alleged substandard construction of the concreting of the Ninoy Aquino By-Way; the Report dated 7 February 1989 of Director Jose Espiritu of the Bureau of Research and Standards and Interim Director Edmundo Mir of the Bureau of Construction on the results of the core testing and evaluation; and the Report on Evaluation of Strength and Concrete Cores.

In his counter-affidavit, Regional Director Pendoza denied all the charges and claimed that he followed all the established DPWH procedures and acted in accordance with the results of the tests conducted by his subordinates at the time of the construction.

On 27 December 1989, this Office referred the administrative charges against Regional Director Pendoza to the Secretary of Justice for formal investigation and recommendation.

On 27 March 1992, the Secretary of Justice forwarded to this Office the report and recommendation of the Investigating Committee he constituted, together with the entire records of the case.

In its Report dated 10 January 1992, the Investigating Committee states that the evidence presented during the proceedings disprove the charge that "despite respondent Pendoza's knowledge of the irregularities, being committed in the execution of the projects, he allowed or tolerated infractions of the law, giving unwarranted benefits to the private contractors to the damage and prejudice of the government."

According to the Investigating Committee, the Ninoy Aquino By-Way Project had been properly awarded to the Panday Pira Construction after a public bidding and the assertion that the said construction company was a mere dummy of other people in collusion with respondent Pendoza had not been established by competent evidence.

The 10 January 1992 Report contains the following relevant findings:

"The project fully complied with the requirements set by standard specifications for highways and bridges of the DPWH. The evidence presented by the respondent clearly proved that the construction was done in accordance with pre-set standards of the DPWH and as established by the test employed to determine the strength of the concrete, called the flexural test (Exhibit 5 up to 5-J). The results of the flexural test show that the samples of the paving concrete all met the standard strength of 525 pounds per square inch (psi) or were within [the] required 15% allowance, as provided in Ministry Order No. 12 issued on February 27, 1984 (Exhibit 6).

"The core test applied by the Inspectorate Team of the DPWH to the drilled samples extracted from the pavement cannot be relied upon in testing the flexural strength of concrete pavements in the light of conclusive technical studies and evaluations which prove that there is absolutely no correlation between flexural strength

measured in the beams and compressive strength measured on the cores as applied to concrete pavements in the Philippines (Exhibits 7, 7-A, 7-A-1, 7-A-2, 7-A-3, 7-B and 7-B-1).

"Moreover, the core test is unreliable in testing [the] strength of concrete pavements in view of the sensitivity of the pavement while it is subjected to prolonged and unnecessary vibrations by the core boring machine. As a matter of fact, the strength of the pavement is effectively lessened in the course of the boring.

"In fact, it is the report of the Inspectorate Team itself which militates against and gravely affects the credibility of the claim of complainant when it failed to recommend the condemnation of the project as completed. As it appears on record, the recommendations were 1) for the necessity of an explanation from the implementing agency for further clarification due to [the] discrepancy of the test results, 2) to re-do the work on the deficiency shoulders on certain section which fails to conform with the approved plans and specifications, and 3) the 10% retention should not be released to take care of the discrepancies and the future defects.

bl
"On the other hand, the evidence shows that the By-Way as built is longer by 328.28 linear meters (L.M.) than the specified length of 7,730.00 L.M. The 14 transversal cracks along the By-Way have been described as hairline cracks which have not progressed even as it was [sic] severely jarred by the big earthquake of 1990. The width of the weakened plane of 3/4" instead of 1/4" has not been shown to affect the strength of the concrete even as the use of formed groove is allowed by the standards set. The shoulder defects have been repaired by the contractor. The design mix or cement factor was 9.1 bags/cu. meter at 42.7 kilogram/bag which is over and above the standard of 9.1 bags/cu. meter at 40 kilograms/bag. The deficiency in [the] thickness of the pavement of 118.43 square meter is a very negligible percentage (0.24%) of the whole project which is 48,000 square meter in area, considering that it is very difficult to obtain a 100% accuracy in thickness. The inspection conducted established the fact that the elevation of the By-Way is higher than what was required in the plans."

The Investigating Committee asserts that the acts of respondent Pendoza do not constitute dishonesty, absence of integrity or bad faith and do not manifest any disposition on his part to deceive or defraud. The said Committee also finds no sufficient evidence to fault respondent Pendoza with the commission of grave misconduct.

2004 2000

Anent the charge that respondent Pendoza falsified official documents, the Investigating Committee claims absence of competent evidence to substantiate the same. Proof submitted indicated that respondent Pendoza affixed his signature on the documents after his subordinates involved in the project had affixed theirs certifying to the correctness of the facts stated in the documents involved.

Respondent Pendoza has also been charged with neglect of duty and conduct prejudicial to the best interest of the services for his alleged failure to discharge his responsibilities in accordance with the legal standards required of a public officer or employee. These charges proceed from respondent Pendoza's alleged failure to take the appropriate course of action on the complaint of Engr. Stephen David that irregularities were being committed in the construction of the Ninoy Aquino By-Way.

Testimonial evidence on record indicates that when Engr. David informed respondent Pendoza of the alleged irregularities, the respondent immediately reacted and told him: "*Huwag kang umalis doon. Patupad mo ang plans and specifications. Ako ang malilintikan kay Cory.*" Respondent Pendoza's reaction manifests that he had neither participation in nor prior knowledge of the alleged irregularities. Otherwise, he would have easily brushed off Engr. David's information and deflected the latter's attention to other matters. However, the respondent in fact admonished and enjoined Engr. David to impose his (David's) authority and to perform his duty to see to the implementation of the project in accordance with the plans and specifications.

Mention should be made that no evidence was presented which would show that Engr. David undertook the specific responsibility respondent Pendoza directed him to assume. As Inspector of the project, Engr. David had the authority to reject questionable materials or suspend the work until any question at issue can be referred to and decided by the Engineer (*Vide* Paragraph 44 [Duties of Inspectors], Part G [Control of Work], Division II, Volume I, 1988 Standard Specifications for Public Works and Highways).

The records also disclose that in addition to enjoining Engr. David to impose his authority as Inspector and designating him as his own representative in the said project, respondent Pendoza also instructed the respective heads of the Materials and Quality Control Division and the Construction Division as well as the Project Engineer of the Ninoy Aquino By-Way to conduct an inquiry into the reported anomalies. These officials assured him there were no such anomalies.

fol

0002 455 4

These actions of respondent Pendoza negate the charge that he tolerated the alleged infractions of the law. He should not be faulted for relying on the reports and assurances of his assistants, considering that these men are presumed to be competent and responsible experts in their respective fields of assignment. He had to trust them and rely on them for the proper and expeditious execution of the project.

Respondent Pendoza, in his capacity as Regional Director of the DPWH Region III Office, could not be expected to personally supervise each and every project being implemented within the region. With his numerous administrative and substantive functions as head of the Regional Office, it would be physically impossible for him to proceed to the field and to personally supervise every project. He could not also be expected to personally inspect the mixing of cement and oversee all the time-consuming construction details. He has the Project Engineer, the heads of each Division and his Inspectors to do these aspects of project implementation for him.

pd The Functional Chart of a typical Regional Office indicates that upon the Assistant Regional Director rests the duty of exercising supervision over the construction, maintenance and work supervision functions in the region. In the case at bar, considering that the records do not show that the Assistant Regional Director had any participation whatsoever in the prosecution of the project, the Project Engineer should have been charged with the supervision over the construction, maintenance, and work supervision functions of the project. Surprisingly, the DPWH Fact-Finding Committee did not recommend the filing of any administrative charge against the said official.

The allegation that the Government suffered damage lacks merit.

As a whole, the By-Way was completed satisfactorily. Although there might have been defects, these were minor ones which were always expected or were unavoidable. For this reason, the Government requires a 10% retention in every contract to answer for whatever corrective measures that have to be subsequently effected.

No proof has been presented that the Government incurred any damage as a result of the prosecution and completion of the Ninoy Aquino By-Way. Note should be taken that after the completion of the project, the same was formally turned over by the contractor to the National Government, through the Department of Public Works and Highways. Quite interestingly, notwithstanding their knowledge of the pendency of the case against respondent Pendoza and their assertions that there were anomalies in the implementation of the Ninoy Aquino By-Way Project, the complainant of record and the DPWH Fact-Finding Committee did not initiate any action

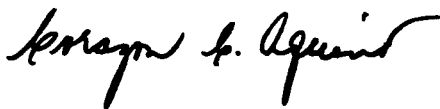
to prevent the turnover of the project to the DPWH. This raises the presumption that the project was properly and regularly prosecuted.

Verily, had the Ninoy Aquino By-Way been defective or had the Government incurred damages as a result of the alleged irregularities attendant to the construction of the project, the DPWH would have valid reasons to refuse acceptance of the project, to disallow payments to the contractor and to require the contractor to replace or remedy the defective portions and it could have resorted to other available remedies to protect the interests of the Government. Clearly, the DPWH saw no need for such measures. It can be said that the interest of the Government had been safeguarded, absent any evidence to show that it was in any manner prejudiced.

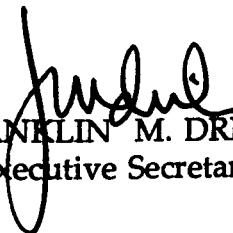
In administrative cases, there must exist moral persuasion of guilt. Such moral persuasion proceeds from the preponderance of evidence presented to substantiate the charges. Should such charges be without basis in evidence having rational probative value, then the charges must fail and the public servant indicted for such charges must be cleared from liability therefrom. In the case at bar, the foregoing discussion discloses the lack of substantive evidence to support the charges and to sustain any conclusion that respondent Pendoza should be held accountable for the acts imputed to him.

ACCORDINGLY, Regional Director Jose C. Pendoza of the Department of Public Works and Highway is hereby EXONERATED of the charges filed against him subject hereof.

DONE in the City of Manila, this 2nd day of June in the year of Our Lord, nineteen hundred and ninety-two.



By the President:



FRANKLIN M. DRILON
Executive Secretary